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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

MOHAMMED SABBAGHI,

Case No.C08-1641-TSZ

Petitioner,

v.

JANET NAPOLITANO, Secretary,
Department of Homeland Security, **ROBIN
OKI**, Acting
Seattle Filed Director, United States
Citizenship and Immigration Services,

PETITIONER'S OPPOSITION TO
RESPONDENT'S MOTION FOR
SUMMARY JUDGMENT, OR IN THE
ALTERNATIVE, REPLY TO
RESPONDENT'S OPPOSITION TO
MOTION FOR DE NOVO REVIEW OF
NATURALIZATION DENIAL

NOTED FOR MOTION CALENDER:
August 14, 2009

Respondents.

I. INTRODUCTION

Petitioner Mohammed Sabbaghi, through undersigned counsel, hereby incorporates his July 23, 2009 Motion for De Novo Review of Naturalization Denial (dkt. #17), as his Response/Opposition to Respondent's Motion for Summary Judgement. Respondents have viewed such Motion for De Novo Review of Naturalization Denial as Petitioner's Opposition/Response to Respondents' Motion for Summary Judgment, and submitted a Reply (also stated as Opposition to Petitioner's Motion for De Novo Review). Dkt. #18.

1 Petitioner wishes to reply to such Opposition to Petitioner’s Motion for De Novo Review,
2 and requests, pursuant to the Court’s local rules, permission to file such a Reply. Contrary
3 to Respondents assertion, nothing prevents counsel from filing the Motion for De Novo
4 Review of Naturalization Denial which may be viewed, and was so viewed by
5 Respondents, as the Opposition to the Respondent’s Summary Judgment Motion. To the
6 extent that this Court allows either Reply, counsel for Petitioner argues as follows:

7
8 ARGUMENT

9 Again, respondents have yet to find one case where a civil dispute was
10 sufficient to deny naturalization. And contrary to respondents description of *Nyari v.*
11 *Napolitano*, 582 F3d 916 (8th Cir. 2009), in that case the Virginia Department of Social
12 Services “founded,” after administrative hearing, that Mr. Nyari had sexually abused his
13 children and put him in a central registry. Such “founding” and placement in a central
14 registry was not sufficient by the 8th Circuit to deny naturalization on summary judgment.
15 As the 8th Circuit ruled, “8 U.S.C. 1421 (c) requires a district court to subject a denial of a
16 naturalization application to de novo review, to ‘make its own findings,’ and to ‘conduct a
17 hearing’ if requested by the applicant. We are aware of no case law—and the government
18 concedes that there is none—in which a court reviewing a denial of a naturalization
19 application has found that the applicant was not a person of good moral character based on
20 the outcome of a civil administrative proceedings.”

21 Likewise, respondents failed to define “unlawful acts” [8 C.F.R.
22 316.10(b)(3)(iii)] as findings of a civil proceeding. Not one case is cited for the
23 proposition that a finding of a civil court or administrative proceeding meets the definition
24 of “unlawful act.” As petitioner makes clear in his Motion for De Novo Hearing, there is
25 not one question on form N-400 that deals with civil disputes, and defendants in their
26 Reply no longer allege that petitioner lied regarding such matters.

1 Respondents do continue to allege that business was conducted with the
2 LLC, but fail to present documentation that any business was conducted, and fail to
3 acknowledge the opinion letter of tax counsel that the LLC is just a shell with no business
4 and no tax filings, set up to protect from harmful actions of Dr. Aflaoni. L429-430. And
5 again, to declare that there are two managers of the LLC is an exaggeration again. The
6 other manager is Dr. Anna Mr. Giustozzi, petitioner's wife. L422-424. She obtained a
7 restraining order against Dr. Aflaoni in that civil matter of issue in this case. Thus,
8 respondent did not lie regarding any other business.

9 Finally, respondent has presented, in his Motion for De Novo Review, his
10 reason for the pause regarding the oath, as supported by the texts that he brought to the
11 hearing. It is for this Judge to evaluate the credibility of his statement during de novo
12 review. It is well established that courts should neither weigh evidence nor make
13 credibility determinations when ruling on a motion for summary judgment. There are no
14 allegations of new "sham issues," to form the basis of summary judgment. Respondents in
15 their Reply acknowledge that "[t]he lines to which Sabbaghi refers [in his denial of the CIS
16 "facts"]", however, reflect nothing more than a recitation of answers Sabbaghi provided
17 during his naturalization interviews."

18 CONCLUSION

19 Summary Judgment is not appropriate procedure in a Request for De Novo Review
20 of Naturalization Denial. Naturalization Petitioners get their day in Federal Court
21 (especially considering that before 1990, only a court could naturalize an applicant, and in
22 some parts of the country, such as Los Angeles, only the Federal Court naturalizes
23 applicants), especially in such a case as this where every "alleged" fact is in dispute, and
24 the government presents a basis for naturalization denial that has yet to be accepted by
25

1 even one Court in the nation. Thus this summary judgment action of respondents' counsel
2 was frivolous and a waste of this Court's time.

3 Respectively submitted this 10th day of August, 2009.

4
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11 CERTIFICATE OF SERVICE

12 I, Bart Klein, hereby certify that on August 10, 2009, I electronically filed the foregoing
13 Petitioner's Opposition To Respondent's Motion For Summary Judgment, Or In The
14 Alternative, Reply To Respondent's Opposition To Motion For De Novo Review Of
15 Naturalization Denial with the Clerk of the Court using the CM/ECF system which will
16 send notification of such filing to the following CM/ECF participant:

17
18 Stacey I. Young
19 Trial Attorney
20 USDOJ, OIL
21 District Court Section
22 P.O. Box 868, Ben Franklin Station
WA, DC 20055
(206) 305-7171
Email: Stacey.young@usdoj.gov

23 I further certify that on the same date I caused to be mailed by United States Postal Service a
24 copy of the foregoing to the following non-CM/ECF participant:

25
26 ~~0~~

27 PETITIONER'S OPPOSITION TO SUMMARY JUDGEMENT
28 AND REPLY MOTION FOR DE NOVO REVIEW
SABBAGHI v .NAPOLITANO
C08-1651-TSZ
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1 Dated this 10th day of August, 2009.

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